

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FREE STREAM MEDIA CORP.,  
Plaintiff,  
v.  
ALPHONSO INC., et al.,  
Defendants.

Case No. [17-cv-02107-RS](#)

**ORDER GRANTING MOTION FOR  
LEAVE TO AMEND INFRINGEMENT  
CONTENTIONS**

Pursuant to Civil Local Rule 7-1(b), plaintiff’s motion for leave to amend its infringement contentions is suitable for disposition without oral argument. Although this motion was initially referred to the assigned magistrate judge for disposition because infringement contentions represent a form of discovery , that reference was withdrawn in light of the interrelationship between this motion and trial scheduling issues. While the scheduled trial date has not been formally vacated or reset, the parties were previously advised unequivocally that this matter will not be going to trial in March of 2018, as originally anticipated.

Local Patent Rule 3-6 provides:

Amendment of the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the non-moving party, support a finding of good cause include:

- (a) A claim construction by the Court different from that proposed by the party seeking amendment;

(b) Recent discovery of material, prior art despite earlier diligent search; and

(c) Recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement Contentions.

“Unlike the liberal policy for amending pleadings, the philosophy behind amending claim charts is decidedly conservative, and designed to prevent the ‘shifting sands’ approach to claim construction.” *LG Elecs. Inc. v. Q-Lity Computer Inc.*, 211 F.R.D. 360, 367 (N.D.Cal.2002). The rules were “designed to require parties to crystallize their theories of the case early in the litigation and to adhere to those theories once they have been disclosed.” *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 n. 12 (Fed.Cir.2006) (quoting *Nova Measuring Instruments Ltd. v. Nanometrics, Inc.*, 417 F.Supp.2d 1121, 1123 (N.D. Cal.2006)).

Even in light of these standards, plaintiff has made an adequate showing that the amendments it seeks to make are warranted. Without endorsing either side’s characterization of the opposition’s discovery conduct, the record demonstrates the recent emergence of information creating a basis for the amendments, that plaintiff exercised sufficient diligence to be permitted to make those amendments, and that undue prejudice will not result. Accordingly, plaintiff’s motion is granted. The parties should be prepared to discuss any impact the amendment will have on trial setting at the forthcoming Case Management Conference.

**IT IS SO ORDERED.**

Dated: January 12, 2018

  
 RICHARD SEEBORG  
 United States District Judge